pursuance of such decision may make an order in the prescribed form for the payment by either party of such sum of money as he deems just without limitation of the amount thereof."

Although sub-section (1) of this section does not specifically provide for an enquiry into any dispute between the employer and the female labourer in respect of her maternity allowance, I am of the view it comes within the ambit of the second limb of the said sub-section which reads:—

"where such dispute arises . . . . out of any of the provisions of this Ordinance, and in pursuance of such decision may make an order . . . . for the payment . . . . of such sum of money as he deems just without limitation of the amount thereof."

Under section 37 of the Ordinance a female labourer is entitled to abstain from work before and after confinement and to an allowance for the period of her abstention from work consequent upon such confinement.

There is however no provision in the Ordinance comparable to Order 19 rule 3(3) of the Subordinate Courts Rules, 1950, which is as follows:—

"Any judgment or order given or made in the absence of a party may, on his application and if good reason for such absence be shown, be set aside and the proceedings may be reheard upon such terms as to costs or otherwise as the court shall think fit. Notice of such application shall be given to the opposite party."

The only remedy open to a person aggrieved by a decision or order of the commissioner under section 69 is an appeal to the High Court under section 77(1) of the Ordinance which reads:—

"If any person whose financial interests are affected is dissatisfied with the decision or order of the commissioner under section 69 or section 73 of this Ordinance such person may appeal to the High Court."

My attention has been drawn to section 4 of the Ordinance. Section 4 reads:—

"Any person affected by any decision or order, other than an order under section 69 or section 73 of this Ordinance, given or made by an officer appointed under subsection (2) of section 3, may, if he is dissatisfied with such decision or order, within fourteen days of such decision or order being communicated to him appeal in writing therefrom to the commissioner."

I cannot see how this section can be invoked as it, in express terms, excludes from its operation any decision under section 69(1) of the Ordinance.

The step taken by the defendants/appellants in applying for a rehearing and in appealing against the refusal of such an application is not warranted by any provision of the Ordinance and is therefore a nullity.

The appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Nadchatiram Bros.; H. W. Tan & George.*

TAN BING HOCK v. ABU SAMAH

[O.C.J. (Raja Azlan Shah J.) May 5, 1967]

[Raub — Civil Suit No. 5 of 1967]

Contract — Agreement to work forest area — Licence not transferable — Agreement amounting to assignment of rights in licence — Whether defence of illegality can be raised — Forest Rules, 1935, rr. 2 & 18

Injunction — Parties entering into illegal contract to deceive public administration — Contract executed and carried out — Whether illegality is good plea for a defendant.

Forest Rules, 1935 — Licence under rr. 2 & 18 — Agreement to work forest area — Whether contravenes rules.

The defendant held a licence to work forest area in Pahang under the Forest Rules, 1935. The licence was subject to certain conditions, in particular, it was not to be transferred by power of attorney to another person or by sub-letting or by other means and no sub-contracts or partnership might be made in connection with the said licence without prior approval in writing from the District Forest Officer.

The plaintiff alleged that there was an agreement entered into between him and the defendant in 1965 to work the forest area and sought an injunction to restrain the defendant from otherwise dealing, disposing etc. of the forest area in question and for a declaration that the defendant was liable to perform the covenants in the agreement. The question before the court was whether the agreement was illegal and if so whether the defendant could raise the defence of illegality.

Held: (1) the agreement in question was null and void and illegal as tending to contravene the provisions of rules 2 and 18 of the Forest Rules, 1935;

(2) in this case the defendant was not the party who sought to enforce the illegal contract; he came to court as a defendant, and it was within his province as a defendant to set up the defence of illegality.

Sarjan Singh v. *Sardara Ali* (2) and *Palaniappa Chettiar* v. *Arunasalam Chettiar* (3) distinguished.

Cases referred to:—

(1) *Leong Chek Pong & Anor.* v. *Lee Chick Yet* [1964] M.L.J. 209, F.C.

(2) *Sarjan Singh* v. *Sardara Ali* [1960] M.L.J. 52, P.C.

(3) *Palaniappa Chettiar* v. *Arunasalam Chettiar* [1962] M.L.J. 143, P.C.

CIVIL SUIT.

D. A. Devadason for the plaintiff.

Kam Woon Wah for the defendant.

Cur. Adv. Vult.

Raja Azlan Shah J.: The plaintiff brought this motion for an interim injunction to restrain the defendant from otherwise dealing, disposing, etc. of a forest area of 1,000 acres known as Block 19 in the District of Chegar, Perah, in the State of Pahang, and for a declaration that the defendant is liable to perform the covenants of an agreement entered between them and dated 30th August 1965.

At the outset it is necessary to say that on a motion like this it is usually undesirable to examine the evidence in detail because it so often happens that at the trial of the action when the witnesses go into the witness-box to give evidence

and are cross-examined, the evidence appears in a different light from that in which it appears in cold print.

It is alleged by the plaintiff in the pleadings that there was an agreement entered into between him and the defendant to work the forest area. The official translation of the agreement reads:—

"Agreement made this 30th day of August 1965 between the Managing Director of Sharikat Tenaga Perusahan Balak Damak Berhad, Jerantut, Pahang, with the agreement of Inche Abu Samah bin Idris, the licence-holder of Kawasan Sudah Kerja Block No. 19 in the District of Chegar Perah, hereinafter called the first party, and Inche Tan Bing Hock, Identity Card No. 072508, of Radio Service, Jalan Lintang, Gemas, Negri Sembilan, hereinafter called the second party.

The contents of this agreement are given below, and both parties are bound by them.

1. The first party allows the second party to work and extract timber logs from the jungle area known as Block 19 containing an area of 1,000 acres in the District of Chegar Perah, as approved by the District Forest Officer, Kuala Lipis, Pahang, *vide* (23) in PHD.L.30/65, dated 18th May, 1965.

2. The second party agrees to pay the deposit of $2,000 (Two thousand dollars) to the Forest Department as required by that Department and this deposit will be returned to the second party on completion of the work on the area above-mentioned.

3. The second party agrees to pay a premium of $200 per mensem as required by the Forest Department in its letter of approval so long as work is in progress in the forest.

4. The second party will pay all taxes on all products which are connected with Government in respect of the area, as required from time to time.

5. The second party agrees to construct roads and provide transport for the removal of the timber logs.

6. The second party will pay all labourers' wages (salaries) and agrees to take out and pay workmens' compensation policies for the labourers.

7. The first party, being the licence-holder, will make arrangements with the Government concerning the area.

8. The second party agrees to pay to the first party reasonable incidental expenses incurred in his business with the Government whenever he is required to do so.

9. Whenever the timber logs have been removed and sold, the second party agrees to pay to the first party a sum of $2,000 (Two thousand dollars) by monthly instalments of $500 (Five hundred dollars). This amount is the total or lump sum in respect of the whole area mentioned above. The calculation of tons is not agreed upon. Payment shall be made at the end of every month until settlement has been made in full.

10. The second party has the right to arrange for the sale of timber logs extracted from the area.

This agreement will be binding upon the successors, heirs and administrators of both parties. We hereby affix our signatures below in the presence of witnesses.

(ABU SAMAH b. IDRIS)
Signature of first party.

(TAN BING HOCK)
Signature of second party.

Witnessed by: (Sgd.) ?
I/C No. NS. 178899.

Witnessed by: (Sgd.) ?
I/C No. 3076132.

Written by: (Sgd.) ?
Public Clerk Licence No. 4/65, Gemas.

Fee Received: $5."

The defence avers that the agreement was between a *sharikat** and the plaintiff. The defence also alleged illegality which was made to deceive the public administration in that the licence was not allowed to be transferred by power of attorney to another person or by subletting or by other means, and that the licence may not be the subject of sub-contracts or partnership without prior approval in writing from the District Forest Officer.

The issue which both parties have conceded that I should determine is the question of illegality, for it is settled law that the court will not lend its aid by way of an injunction if the agreement in respect of which the breach has been committed is illegal.

Mr. Devadason on behalf of the plaintiff strenuously urged that the agreement is not unlawful and based his argument on the proposition that to work the forest area does not constitute illegality. Reference was made to the Federal Court case of *Leong Chek Pong & Anor.* v. *Lee Chick Yet* [1] in which it was held that on the strict construction of the Mining Enactment (Cap. 147) it would be highly irrational to define the expression "work" to limit the licence-holder himself to do the physical work. In that case it was asked whether the expression "work" would be lawful if the licence-holder does the physical work by his servants, and if so, must the servants work under his immediate direction or under the direction of a manager employed by the licence-holder, or must the land be worked by an agent or partner or as in that case by a person authorised by the licence-holder? The court was cautious not to give an exhaustive statement of the law for that would mean to re-write the law. In my view that case was decided upon the interpretation of the Mining Enactment, and I fail to see any substantial connection with the present case. I do not think one gets any assistance from the construction of other statutes passed at different times and in pursuance of different lines of thought.

In the present case the licence was issued to the defendant on 1st July 1965 and expired on 31st December 1965 under rules 2 and 18 of the Forest Rules, 1935. It is subject to additional conditions, in particular, no transfer by power of attorney to another person or by subletting or by other means and no sub-contracts or partnerships may be made in connection with the licence in question without prior approval in writing from the District Forest Officer.

* Malay word meaning "company" or "partnership".

In my view, the agreement executed by the parties has all the badges of a complete assignment of the rights in the licence to the plaintiff. It allows the plaintiff to work and extract timber logs in the whole of the area; the plaintiffs agrees to pay the deposit and all other dues which are required by Government; the plaintiff agrees to construct roads and provide transport and to pay labourers' salaries and their workmen's compensation contributions. The defendant is the licence-holder to make arrangements with Government concerning the area, and the plaintiff agrees to compensate him for all expenses incurred thereby. The most important clause in the agreement provides for the payment of $2,000 as a lump sum or total payment in consideration for the logs extracted and sold by the plaintiff. The calculation of tons is not agreed upon, and lastly the arrangement of sale of timber logs belongs to the plaintiff. In short, the licence-holder, namely the defendant, merely sits still and gets a lump sum payment of $2,000 while the plaintiff works the area and fulfils all the obligations that are required under the Forest Enactment. To my mind, it possesses the notorious badge of the "*Ali Baba*" form of contract.

In my judgment the agreement is null and void and illegal as tending to contravene the provisions of rules 2 and 18 of the Forest Rules, 1935 which, as in the case of the Rubber Supervision Enactment, 1937, are intended to ensure the continuance of an industry on which the prosperity of this country is to some extent dependent.

Mr. Devadason then argued that although the agreement between the parties was illegal, nevertheless it had been executed and carried out and on that account it was effective to pass the property in the licence to the plaintiff. (See *Sarjan Singh* v. *Sardara Ali* [2]). And on the authority of *Palaniappa Chettiar* v. *Arunasalam Chettiar* [3] it was also said that the defendant was precluded from setting up the defence of illegality. In my view the two cases can be distinguished. In the former the plaintiff founded his claim on his right of property in the lorry and his possession of it. He did not have to found his claim by setting up the illegal or immoral act. In the latter case the father had to base his claim on his own fraud which was fully achieved and that the court would not lend its aid to such a man. In the present case the defendant is not the party who seeks to enforce the illegal contract. If he were the plaintiff he would be in the same position as in the *Chettiars'* case. He comes to court as a defendant, and my understanding of the law is that it is within the province of a defendant to set up the defence of illegality. If the law is otherwise, the result would be calamitous. It would mean that the court, contrary to precedents, will lend its aid to enforce an illegal act.

The application is therefore dismissed with costs.

Application dismissed.

Solicitors: *D. A. Devadason; Kam Woon Wah & Co.*

HO WEE CHEONG v. HO POI YUEN

[O.C.J. (Raja Azlan Shah J.) May 10, 1967]

[Raub — Civil Suit No. 17 of 1966]

Landlord and Tenant — Notice to quit — Business premises — Whether sleeping on premises at night makes premises a dwelling-house — Whether acceptance of rent waives notice — Control of Rent Ordinance, 1956.

Landlord and Tenant — Rent — Standard rent — Rent paid in excess — Premises de-controlled — Control of Rent Ordinance, 1956, s. 6.

The plaintiff landlord claimed possession of premises let to his tenant, the defendant. The tenancy was in respect of 3/4 of the front portion of the ground floor of premises known as No. 21 Bibby Road, Raub, for a period of 8 years ending on April 30, 1966 at a rental of $140 per month. The terms of agreement *inter alia* included (i) that the defendant shall be at liberty . . . to carry out any type of business he desires, and (ii) that the defendant binds himself to deliver vacant possession at the expiration of the tenancy on being served with 3 months notice to quit by the lessor. The plaintiff on January 4, 1966 caused a notice to quit to be served on the defendant but the latter failed to deliver vacant possession on the expiry of the said notice. Rents had been tendered and accepted by the plaintiff after the expiry of the tenancy but without prejudice to this pending litigation. The premises were de-controlled on July 1, 1962, and at the date when the proceedings began *i.e.* May 9, 1966, the provisions of the Control of Rent Ordinance, 1956, only applied to domestic premises as far as the State of Pahang was concerned (see Pahang P.U. 13/1966).

Held: (1) the question whether a premises or part of it was let as a "domestic premises" within the meaning of the Ordinance is to be decided by looking at the terms of the agreement. In this case at the time of the letting the contemplated user was that of a business premises; the control of Rent Ordinance did not apply to such premises;

(2) the notice to quit had not been waived and the tenancy had been determined with effect from April 30, 1966.

Cases referred to:—

(1) *Hardial Singh* v. *Malayan Theatres Ltd.* [1955] M.L.J. 180.

(2) *Tovey* v. *Tyach* [1955] 1 Q.B. 57.

(3) *Wolfe* v. *Hogan* [1949] 2 K.B. 194.

(4) *Court* v. *Robinson* [1951] 2 K.B. 60 at p. 73.

(5) *Greig* v. *Francis & Campion* (1922), 38 T.L.T. 519.

(6) *Barrett* v. *Hardy Brothers (Alnwick) Ltd.* [1925] 2 K.B. 220, 227.

(7) *MacMillan Co. Ltd.* v. *Rees* [1946] 1 All E.R. 675.

(8) *Hong Cheok Lam* v. *Ong Sim Mai* [1951] M.L.J. 34.

(9) *Clark* v. *Grant* [1950] 1 K.B. 104, 105.